IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

WP(C).No. 5406 of 2007(R)

PETITIONER:

1. K.JAYARAJAN,
   KUNDUR HOUSE, CIVIL STATION P.O., CALICUT.

2. SUNDARSHANAN,
   KUNDUR HOUSE, CIVIL STATION P.O., CALICUT.

3. K.PRAKASHAN,
   KUNDUR HOUSE, CIVIL STATION P.O., CALICUT.

4. K.DEVARAJAN,
   KUNDUR HOUSE, CIVIL STATION P.O., CALICUT.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
   THE SECRETARY TO GOVERNMENT,
   LOCAL SELF GOVERNMENT DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CALICUT CORPORATION, REPRESENTED BY
   THE SECRETARY, CORPORATION OFFICE, CALICUT.

3. THE CALICUT DEVELOPMENT AUTHORITY,
   REPRESENTED BY THE SECRETARY, CALICUT.

4. THE CHIEF TOWN PLANNER,
   OFFICE OF THE CHIEF TOWN PLANNER,
   THIRUVANANTHAPURAM.

BY ADV. SRI.M.P.PRABHANANDAN,SC,KOZHIKODE CORPN
SRI.M.K.ABOOBACKER, SC(R3)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 5406 OF 2007

Dated this the 2nd day of March, 2007

JUDGMENT

Heard Sri. M.K. Chandramohan Das, counsel for the petitioners, Sri.M.P. Prabhanandan,Standing Counsel for the Calicut Corporation, Sri.M.K. Aboobacker, Standing Counsel for the Calicut Development Authority and the Government Pleader Smt. T.B. Ramani.

2. The grievance of the petitioner is that application for building permit submitted by them have been rejected by the respondents on the ground that the area upon which the buildings are proposed to be constructed is earmarked in the Town Planning Scheme for a project by name 'Dream City Project'. Exts.P4 to P6 are the rejection orders. Impugning Exts.P4 to P6 on various grounds the petitioners pray that rejection orders be quashed and directions be issued to respondents 2 and 3 to grant NOC/building permit as applied for by them.

3. Having regard to the submissions addressed before me by the counsel appearing for the various parties, I find force in the submission of the learned counsel for the petitioners that the issue is covered by the judgment of Supreme Court in **Raju Jethmalani & others V.State of Maharashtra & others** [(2005) 11 SCC 222] and also by judgment of the Division Bench of this Court in **Padmini V. State of Kerala** [1999 (3)

KLT 465]. Concededly no notification under Section 4 of the Land Acquisition Act has been promulgated so far for acquisition of any portion of the petitioners' property in connection with Dream City Project or any other project. The learned Government Pleader submitted that the Government is very seriously considering the implementation of the Dream City Project. Even though the project had been under consideration for several years no concrete steps have been taken so far in implementation of the project, I do not think that the respondents are justified in freezing the properties of the petitioners indefinitely. The principles laid down in **Jathmalani**'s case(supra) and the judgment in Padmini's case also should be taken into account.

4. Under these circumstances, the Writ Petition will stand disposed of issuing the following directions:

The petitioners are directed to file undertaking in the form of affidavits before the 1st respondent stating that in the event of any notification under Section 4 of the Land Acquisition Act being promulgated within a period of 15 months from the date of issuance of permit by the 2nd respondent, the petitioners' will surrender the plots upon which the buildings are constructed on the strength of the permit together with the above building, without making any objection or claim for compensation for the building. Once such undertakings are

submitted by the petitioners, respondents 2 and 3 will issue necessary NOCs and building permits to the petitioners provided the plan submitted by the petitioners is otherwise in order. In other words, the proposal to have the Dream City Project implemented shall not be a ground for rejecting application for building permits. It is made clear that this judgment will not stand in the way of the Corporation or the Government in acquiring the properties of the petitioners for any other public purpose even after the period of 15 months mentioned above. But under such a contingency, the petitioners will be entitled for adequate compensation under the provisions of Land Acquisition Act.

PIUS C. KURIAKOSE, JUDGE

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